

PATENT
Attorney Docket No. 104.0004-03000
Customer No. 22882

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	Confirmation No.: 3765
David F. Meschan)	
Serial No.: 10/735,343)	Group Art Unit: 3728
Filed: December 11, 2003)	Examiner: Ted Kavanaugh
For: ATHLETIC SHOE WITH)	
IMPROVED HEEL STRUCTURE)	

Mail Stop 313(c)
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

INFORMATION DISCLOSURE STATEMENT UNDER 37 C.F.R. § 1.97(b)

Pursuant to 37 C.F.R. §§ 1.56 and 1.97(b), applicant brings to the attention of the Examiner the documents listed on the attached Form PTO-1449. This Information Disclosure Statement is being filed concurrently with a Request for Continued Examination (RCE) for the above-referenced application.

Copies of the listed documents are enclosed.

Applicant respectfully requests that the Examiner consider the listed documents and indicate that they were considered by making appropriate notations on the attached form.

As set forth in the Information Disclosure Statement dated February 1, 2005, Applicant's U.S. Patent No. 6,604,300 is the subject of litigation in the United States District Court for the Middle District of North Carolina, Greensboro Division, Case No. 1:03CV01207, hereinafter referred to as Litigation 3.

In Litigation 3, the defendant asserted that various references were pertinent to the issue of validity of each of the above-referenced patents under 35 U.S.C. §§ 102 and 103. Applicant notes for the Examiner on the attached Form PTO-1449 in the column for the Examiner's initials the additional references identified by defendant. References identified by the defendants in Litigation 3 as being allegedly pertinent to the Litigation 3 patents are identified by the designation "Lit. 3."

In an Information Disclosure Statement submitted May 23, 2005 in Application No. 10/881,391, Applicant submitted a copy of a Memorandum Opinion and Order of the U.S. District Court for the Middle District of North Carolina, dated May 17, 2005 in Litigation 3 which construes claims of related patents, including U.S. Patent No. 6,604,300, from which this pending application claims priority. Applicant will provide a copy of this document upon request.

This submission does not represent that a search has been made or that no better art exists and does not constitute an admission that each or all of the listed documents are material or constitute "prior art." If the Examiner applies any of the documents as prior art against any claim in the application and applicant determines that the cited documents do not constitute "prior art" under United States law, applicant reserves the right to present to the office the relevant facts and law regarding the appropriate status of such documents.

Applicant further reserves the right to take appropriate action to establish the patentability of the disclosed invention over the listed documents, should one or more of the documents be applied against the claims of the present application.

If there is any fee due in connection with the filing of this Statement, please charge the fee to our Deposit Account No. 50-1068.

Respectfully submitted,

MARTIN & FERRARO, LLP

Date: July 27, 2005

By: 
Thomas H. Martin
Registration No. 34,383

1557 Lake O'Pines Street, NE
Hartville, Ohio 44632
Telephone: (330) 877-0700
Facsimile: (330) 877-2030

OMB 0651-0031

Substitute for FORM PTO-1449			Attorney Docket Number 104.0004-03000		Customer No. 22882	
INFORMATION DISCLOSURE CITATION IN AN APPLICATION			Applicant David F. Meschan		Application Number 10/735,343	
(Use several sheets if necessary) Sheet <u>1</u> of <u>1</u>			Filing Date December 11, 2003		Group Art Unit 3728	Examiner T. Kavanaugh
U.S. PATENT DOCUMENTS						
EXAMINER INITIAL	DOCUMENT NUMBER	DATE	NAME	CLASS	SUBCLASS	FILING DATE IF APPROPRIATE
FOREIGN PATENT DOCUMENTS						
	DOCUMENT NUMBER	DATE	COUNTRY	CLASS	SUBCLASS	TRANSLATION (YES/NO)
OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)						
Lit. 3	TURNTEC Brochure; The New State of the Art; American Sporting Goods Corp.					
Lit. 3	AFFIDAVIT OF JERRY TURNER dated December 10, 2004; Akeva, L.L.C. v. Adidas America, Inc.; Civil Action No. 1:03-cv-01207.					
EXAMINER		DATE CONSIDERED				
EXAMINER: Initial if citation considered, whether or not citation is in conformance with MPEP § 309; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to the applicant.						